

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

THURSDAY, THE 11TH OCTOBER 2007 / 19TH ASWINA 1929

WP(C).No. 7177 of 2006(D)

PETITIONER:

- 1. M.S. SAJEEV KUMAR, S/O.M.K.SREEDHARAN,
MAMPALATHU HOUSE, T.B. ROAD, KOTTAYAM.**
- 2. SUJA PRABHASH,
ILLATHUKALATHIL, CHINGAVANAM P.O.,
NATTAKOM, KOTTAYAM.**

BY ADV. SRI.K.REGHU KOTTAPPURAM

RESPONDENTS:

- 1. THE ASSISTANT EXCISE COMMISSIONER,
KOTTAYAM DIVISION, KOTTAYAM.**
- 2. THE TAHSILDAR (R.R), KOTTAYAM.**
- 3. THE REVENUE DIVISIONAL OFFICER (R.D.O),
KOTTAYAM.**
- 4. THE COMMISSIONER & SECRETARY TO GOVT.,
REVENUE DEPARTMENT, STATE OF KERALA,
THIRUVANANTHAPURAM.**
- 5. THE SECRETARY TO GOVT.,
FINANCE DEPARTMENT, STATE OF KERALA,
THIRUVANANTHAPURAM.**

BY GOVERNMENT PLEADER SRI.MATHEWS VADAKKEL

**THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD
ON 11/10/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

W.P.(C) NO.7177/2006

APPENDIX

PETITIONER'S EXHIBITS

**EXT.P1:- COPY OF THE REVENUE RECOVERY NOTICE VIDE NO.C-5 2468/94
DT. NIL.**

**EXT.P2:- COPY OF THE NOTICE BEARING NO.C5-2468/94 DT. 3.11.04
ISSUED BY 1ST RESPONDENT.**

**EXT.P3:- COPY OF THE PETITION DT. 20.11.04 SENT BY THE 2ND
PETITIONER BEFORE THE 3TH RESPONDENT.**

EXT.P4:- COPY OF THE JUDGMENT DT. 14.3.05 IN WP(C) NO.33835/04 .

EXT.P5:- COPY OF THE PROCEEDINGS NO.LR (B7)37006/05 DT. 20.2.06.

**EXT.P6:- COPY OF THE REPRESENTATION DT. 28.2.06 SENT BY THE
PETITIONERS TO THE FINANCE MINISTER.**

/TRUE COPY/

P.S. TO JUDGE

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V.GIRI, J.

W.P.(C).No.7177 of 2007 G

Dated this the 11th day of October, 2007.

JUDGMENT

The second petitioner was a licensee of arrack shops 109 and 111 under Erattupetta Range during the year 1993-94. Apparently, there was default in payment of kist amount. Revenue recovery proceedings were initiated against the licensee as also the first petitioner, who was conducting the shop as a manager, at the relevant point of time.

2. A property comprising of 7.96 cents situated in Kottayam Town stated to be near Hotel Ida was proposed to be sold in auction. Ext.P1 is a notice issued under Section 49 of the Act. Apparently, there were no bidders. On 27.2.2001, it seems that the auction was adjourned to 31.3.2001. There is a dispute as to whether the notice of adjournment of the sale was actually served on the petitioner.

3. Revenue recovery proceedings were challenged by the petitioners even earlier in O.P.No.5/01. This court permitted the petitioners to pay

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Rs.4,07,864/- in instalments. Apparently, the petitioners paid an amount of Rs.7 lakhs from 29.3.1997 to 28.8.2002. Thereafter, It seems that amount due to the State by way of abkari arrears has not been remitted. In O.P.No.14817/01, 1253/02, 5688/07 and 3383/04 filed by the petitioners challenging the recovery proceedings there was a stay at some stage or the other, insofar as the sale of the property scheduled in Ext.P1 is concerned. As stated above, it was adjourned to 30.3.2001. On the said day, there were no bidders and it seems that the Government bid and purchased the same for Re.1/- under Section 50 of the Revenue Recovery Act. It further seems that the said auction was confirmed by the Revenue Divisional Officer on 14.10.2004. Thereupon, the petitioners had approached this court in W.P.(C)No.33835/04 which was disposed of by Ext.P4 judgment directing the Commissioner of Land Revenue to dispose of the revision filed by the petitioners. Ultimately, the Commissioner disposed of

the revision upholding the sale. In this writ petition, the petitioner challenges Ext.P5 order passed by the Land Revenue Commissioner.

4. In the counter affidavit filed by the respondents reference is made to the earlier writ petitions filed by the petitioners after the commencement of the Revenue Recovery Act. The respondents also say that over a period from 31.3.1997 to 30.3.2006 an amount of Rs.11,75,000/- has been remitted towards arrears of arrack shop of Ernakulam Range for the A.S.Gr.No.III/93-94. In para 6 of the statement reference is made to the fact that amounts were remitted on six occasions starting from 26.9.2001 to 30.3.2006 altogether aggregating almost Rs.10 lakhs, which means, that even after the sale held on 31.3.2001 when the State had purchased the property, the defaulter had remitted the amount and the State had accepted almost an amount of Rs.10 lakhs.

5. It is further stated in the said counter affidavit that after giving credit to Rs.11,75,000/-, which had been remitted in the manner aforementioned, an amount of Rs.8,10,748/- (consisting of the principal amount of Rs.5,76,881/- interest of the tune of Rs.2,33,867/-) is outstanding to be collected as on June, 2007. It is further stated that the petitioner is liable to pay the said amount.

6. At the time of hearing, learned counsel for the petitioner Mr.Reghu Kottappuram submits that notwithstanding the challenge against the sale held on 31.3.2001 and its confirmation, he may be permitted to remit the amount, as mentioned in the counter affidavit. On such remittance, the sale of the property held on 31.3.2001 wherein the property was purchased by the Government for an amount of Rs.1/- under Section 50 of the Revenue Recovery Act may be set aside. It is in this background that I have to consider the contentions as regards the validity of the sale conducted on 30.3.2001.

7. Section 50 of the Revenue Recovery Act, wherein the Government is entitled to purchase a property brought to revenue sale for an amount of Rs.1/-, no doubt will have to be treated as a provision which the Government may resort to in exceptional circumstances. If there are no bidders on the date on which the sale is conducted, Section 49 contemplates that the sale will have to be adjourned and the reason for adjournment will have to be recorded by the Revenue Officials. Section 49 contemplates that notice of the adjournment will have to be given to the defaulter and if on the date to which the sale is adjourned there is no bidder, the State is entitled to purchase it for an amount of Rs.1/-. Notice of sale as given vide Ext.P1 notice is to the effect that the sale is to be held on 27.2.2001. Apparently, there were no bidders on the date of sale.

8. In the counter affidavit it is stated that the sale was adjourned to 30.3.2001, but at the same time

the notice of adjournment was intimated to the defaulter only on 20.3.2001. It is difficult to understand as to why, the notice of the adjournment of sale was given only on 20.3.2001. The petitioner has a contention that he has not received the notice of adjourned sale on 20.3.2001. It is also noteworthy that I do not find any averment in the counter affidavit that the adjourned sale was published in terms Section 49(4) of the Act, either in the Taluk or Village offices concerned or at the office of the local authority within whose jurisdiction the property is situate.

9. For all these reasons, especially taking note of the fact that a piece of valuable property in the heart of Kottayam town is apparently purchased by the Government under Section 50 of the Revenue Recovery Act for a sum of Rs.1/-, I think, the original owner of the property must be given a chance to redeem the said property. Obviously, this cannot be done, except on asking him to pay the amount which is even now due to

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the State. I take note of the fact that an amount of Rs.10 lakhs was paid by the petitioner subsequent to 30.3.2001 and it was accepted by the State.

In the circumstances the writ petition is allowed in part. Ext.P5 order is set aside. Sale of the property notified in Ext.P1 shall stand set aside, provided the petitioner pays an amount of Rs.8,10,248/- plus interest at 18% from June, 2007, as also recovery charges within a period of six weeks from today. If such payment is not made, then Ext.P5 shall stand confirmed and the sale held on 31.3.2001 shall also stand confirmed. The third respondent shall, within three weeks from today, intimate the petitioner as to the precise amount that is due from the petitioner.

Sd/-
(V.GIRI)
JUDGE

sk/

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